

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Douglas P. Miller, Chair
Case Management Subcommittee, Hon. Arthur E. Wallace, Chair
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DATE: October 16, 2002

SUBJECT: Civil Rules: Miscellaneous Technical Amendments (amend Cal.
Rules of Court, rules 229, 1601 and 1615; repeal rules 222.1 and
374) (Action Required)

Issue Statement

Several technical changes to the California Rules of Court are desirable at this time. Rules 229, 1601, and 1615 should be amended. In addition, rules 222.1 and 374 should be repealed.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2003:

1. Repeal rule 222.1 (Notice of waiver of jury trial) because it has been superseded by statute;
2. Amend rule 229 (Proposed jury instructions) to correct an outdated reference to rule 201(b);
3. Repeal rule 374 (Motions concerning trial setting conferences) as obsolete because case management conferences are presently used to set trials instead of separate trial setting conferences;
4. Amend rule 1601 (Arbitration hearing list) to be consistent with the new rules on civil case management; and

5. Amend rule 1615 (The award; entry as judgment; motion to vacate) to correct a statutory reference.

The text of the amended and repealed rules is attached at pages 5–7.

Rationale for Recommendation

Rule 222.1 (Notice of waiver of jury trial)

Rule 222.1 was adopted effective January 1, 2001 to cover a gap in the law. The statute on waiver of jury trial contains a provision prescribing how and when parties who have received notice that another party has waived a jury trial may file and serve a demand for a jury trial and deposit advance jury fees. (See Code of Civil Proc., §631(b).) However, this provision applies only to “a superior court action, other than a limited civil case.” (Id.) Rule 222.1 provides that the same procedure applies to limited civil cases.

As a result of the enactment of Judicial Council—sponsored legislation, rule 222.1 will no longer be necessary. Assembly Bill 3027 (Corbett) significantly amended the jury waiver statute. Amended Code of Civil Procedure section 631 will apply to all civil cases in which there is a right to a jury trial. Furthermore, the amendments will simplify the methods by which a jury trial may be waived and will delete the provisions for an opposing party to reinstate a jury trial following waiver by the party who originally requested the trial. Hence, rule 222.1 should be repealed, effective January 1, 2003, because it will be superseded by statute.

Rule 229 (Proposed jury instructions)

Rule 229 concerns proposed jury instructions. Rule 229(b) on the form of instructions states that each proposed instruction shall be “in the form specified by rule 201(b).” The reference to rule 201(b) is no longer correct. Before July 1, 1999, subdivision (b) of rule 201 referred to the size of paper, pagination, and type style. When rule 201 was amended in 1999 to include a new subdivision (b) on the use of recycled paper, the existing subdivision (b) was relettered as subdivision (c). However, the reference in rule 229 to subdivision (b) of rule 201 was not changed at that time.

To reflect the 1999 amendment of rule 201, the reference in rule 229 to rule 201(b) should be changed. Rule 229(b) could be changed to refer to rule 201(c) or more generally to rule 201. Because not just subdivision (c) but the other format provisions in rule 201 should apply to proposed jury instructions, the committee recommends that the reference in rule 229 to “rule 201(b)” be replaced with a reference to “rule 201.”

Rule 374 (Motions concerning trial setting conferences)

Rule 374 concerns motions to continue, advance, reset or specifically set trial setting conferences. Under the new case management rules that became effective July 1, 2002, separate trial setting conferences are no longer held. Instead, trial setting takes place at the case management conference. Hence, rule 374 is no longer meaningful and should be repealed.

Rule 1601 (Arbitration hearing lists)

Rule 1601 should be amended to be consistent with the new case management rules that became effective July 1, 2002. The title of the amended rule should be changed to *Stipulations and requests for assignment to arbitration*.

Current rule 1601(a) provides that a stipulation to arbitration must be filed no later than the “first status or case management conference or similar event,” or 195 days after the complaint is filed, whichever is earlier. To conform to the new case management rules and procedures, this provision should be changed. The committee recommends requiring that the stipulation to arbitration be filed at the time the initial case management statement is filed. In this way, the stipulation to arbitration may be reviewed along with the case management statement prior to the case management conference. Also, because under rule 212 the case management review must take place no later than 180 days after the complaint is filed, the 195-day provision in rule 1601(a) is no longer necessary.

Requests for arbitration under rule 1601(b) presently must be filed at the same time as the “at issue memorandum” is filed. To be consistent with the new case management rules, the committee recommends changing this to be no later than the time the initial case management statement is filed.

Rule 1601(d) currently provides that, absent a stipulation or request for arbitration, cases must be set for arbitration at a conference held no later than three months after the “at issue memorandum” is filed or no later than 90 days before trial, whichever comes first. The committee recommends substituting the initial case management conference for the conference described in the current rule.¹

Rule 1615 (the award; entry as judgment; motion to vacate)

Rule 1615(d) should be amended to correct a statutory reference because Code of Civil Procedure section 1286.2 was relettered and renumbered, effective January 1, 2002. Specifically, Rule 1615(d) should be amended to refer to subdivisions (a)(1), (2), and (3) instead of (a), (b), and (c).

¹ In addition to the changes described above, the amendments to rules 229 and 1601 replace “shall” with “must” and make some other stylistic improvements.

Alternative Actions Considered

Although the amendment of rules 229, 1601, and 1615, and the repeal of rules 222.1 and 374 might be postponed, the committee considered it desirable to take action at this time on these rules so as to eliminate confusion or ambiguity.

Comments from Interested Parties

Because the rule changes are technical, they should be made without circulating the rules for comment.

Implementing Requirements and Costs

The proposed rule changes should require no additional costs and should clarify civil procedures and practices.

Attachment

Rules 229, 1601, and 1615 of the California Rules of Court are amended and rules 222.1 and 374 are repealed, effective January 1, 2003, to read:

Rule 222.1. Notice of waiver of jury trial

- (a) ~~[Notice of waiver in unlimited civil cases]~~ Notice of waiver of jury trial in unlimited civil cases is governed by Code of Civil Procedure section 631(b).
- (b) ~~[Notice of waiver in limited civil cases]~~ In limited civil cases, if a jury is demanded by either party and the party, prior to trial, by announcement or by operation of law, waives a trial by jury, all adverse parties shall have five days following the receipt of notice of the waiver to file and serve a demand for a trial by jury to deposit any advance jury fees that are then due.

Rule 229. Proposed jury instructions

- (a) **[Citation of authorities]** Each proposed jury instruction presented by a party, except instructions requested by number reference to forms previously approved by the court, ~~shall~~ must contain at the bottom thereof a citation of authorities, if any, supporting the statement of law ~~therein in the instruction.~~
- (b) **[Form of instruction]** Except as to such approved forms, each proposed instruction ~~shall~~ must be in the form specified by rule 201(b), indicating the party upon whose behalf it is requested. Instructions ~~shall~~ must be numbered consecutively, but not firmly bound together.
- (c) **[Refusing proposed instructions]** Proposed instructions, except those required by law, which do not comply with this rule or with law may be refused, in which event the judge ~~shall~~ must endorse ~~thereon~~ on the proposed instruction the reason for its refusal.

Rule 374. ~~Motions concerning trial setting conferences~~

~~A motion to continue, advance, reset, or specially set a trial setting conference shall be made before the presiding judge or the presiding judge's designee. The motion shall not be granted, except on notice, the filing of a declaration showing good cause, and the appearance by the moving party at the hearing on the motion.~~

27 **Rule 1601. Stipulations and requests for assignment to arbitration hearing**
28 **list**

- 29
- 30 (a) **[Stipulations to arbitration]** When the parties stipulate to arbitration,
31 the action shall must be ~~placed on the set for arbitration hearing list~~
32 forthwith. The stipulation shall must be filed no later than the time the
33 first status or initial case management conference statement or similar
34 event is filed, or 195 days after the complaint is filed, whichever is
35 earlier, unless the court orders otherwise.
- 36
- 37 (b) **[Requests for arbitration]** Upon written request of a plaintiff to submit
38 an action to arbitration, the action shall must be ~~placed on the arbitration~~
39 ~~hearing list set for arbitration~~ subject to a motion by defendant for good
40 cause to delay the arbitration hearing. The request shall must be filed at
41 no later than the time the at issue memorandum initial case management
42 statement is filed, or at such later date as is permitted by the court unless
43 the court orders otherwise.
- 44
- 45 (c) **[Cross-actions]** An action involving a cross-complaint where a
46 plaintiff has elected to arbitrate shall must be removed from the
47 ~~arbitration hearing list of cases assigned to arbitration~~ if, upon motion of
48 the cross-complainant made within 15 days after notice of the election
49 to arbitrate, the court determines that the amount in controversy relating
50 to the cross-complaint exceeds \$50,000.
- 51
- 52 (d) **[Case management conference]** Absent a stipulation or a request by
53 plaintiff to submit to arbitration, ~~(1) in superior courts actions shall~~
54 must be ~~placed on the arbitration hearing list set for arbitration~~ at the
55 initial case management conference when the court determines the
56 amount in controversy, which conference shall be held no later than
57 three months after the at issue memorandum is filed and or no later than
58 90 days before the date set for trial, whichever occurs first; (2) in
59 municipal courts, actions shall be placed on the hearing list at such time
60 as is designated by local rule.
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62 **Rule 1615. The award; entry as judgment, motion to vacate**

63
64 (a)-(c) ***

- 65
- 66 (d) A party against whom a judgment is entered pursuant to an arbitration
67 award may, within six months after its entry, move to vacate the
68 judgment on the ground that the arbitrator was subject to a
69 disqualification not disclosed before the hearing and of which the

70 arbitrator was then aware, or upon one of the grounds set forth in
71 section 473 or subdivisions (a), ~~(b), and (c)~~ (1), (2), and (3) of section
72 1286.2 of the Code of Civil Procedure, and upon no other grounds. The
73 motion shall be heard upon notice to the adverse parties and to the
74 arbitrator, and may be granted only upon clear and convincing evidence
75 that the grounds alleged are true, and that the motion was made as soon
76 as practicable after the moving party learned of the existence of those
77 grounds.